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May 13, 2015

The Honorable Chester A. McPherson, Acting Commissioner
D.C. Department of Insurance, Securities and Banking
810 First Street NE
Suite 701
Washington, D.C. 20002

*Re: In the Matter of Surplus Review and Determination of Group
Hospitalization and Medical Services, Inc., Order No. 14-MIE-012
(D.C. Dep't of Ins., Secs. & Banking Dec. 30, 2014)*

We are writing to request that you continue to move the GHMSI surplus review proceeding forward. We suggest that the next steps are for the Commissioner to conduct a public hearing to help the Commissioner develop a “fair and equitable” plan to dedicate the excess surplus attributable to the District to community health reinvestment and promptly thereafter to order GHMSI to implement the plan, as an exercise of the Commissioner’s authority to “issue such orders as are necessary to enforce the purposes” of the D.C. Medical Insurance Empowerment Amendment Act of 2008 (“MIEAA”), D.C. Code § 31–3506(i).

Developments in the surplus review proceeding to date make clear that this is the prudent course of action. To summarize:

- *D.C. Surplus Decision.* On December 30, 2014, the Commissioner issued his decision concerning GHMSI’s surplus as of December 30, 2011 (the “2011 Surplus Decision”). (This decision followed the September 2012 remand by the D.C. Court of Appeals on the previous Commissioner’s review of the 2008 surplus.) The 2011 Surplus Decision found that GHMSI’s 2011 surplus was excessive by \$268 million and that \$56 million of that excess surplus was attributable to the District of Columbia. The Commissioner ordered GHMSI to file a plan to dedicate the excess surplus attributable to the District to community health reinvestment in a fair and equitable manner as required by MIEAA.
- *Reconsideration Motions/ Appeals.* Both GHMSI and DC Appleseed sought reconsideration of aspects of the Commissioner’s 2011 Surplus Decision, which the Commissioner denied. Both GHMSI and DC Appleseed filed appeals of the decision. On April 28, the D.C. Court of Appeals dismissed both appeals on the ground that the Commissioner’s surplus decision will not be a final, appealable order

until the Commissioner issues his decision implementing the reinvestment of the \$56 million in the District.

- *Virginia/Maryland Commissioners.* Meanwhile, the insurance commissioners of both Virginia and Maryland considered whether the D.C. Commissioner's 2011 Surplus Decision would affect Virginia and Maryland adversely. On April 15, Commissioner Cunningham determined that GHMSI's spending the \$56 million on community health reinvestment in the District would not harm Virginia residents. Commissioner Redmer has retained the same consultant as Commissioner Cunningham did to undertake a similar analysis. We expect the conclusion of the Maryland analysis will be the same and that Commissioner Redmer will not attempt to countermand the D.C. Commissioner's order. (A countermanding order would in any event be preempted by MIEAA and Congress's grant to the District of regulatory authority over GHMSI.)
- *GHMSI Rejects Need for Further Expenditure.* On March 16, GHMSI submitted a letter claiming that it had already complied with the 2011 Surplus Decision by making prior expenditures of \$56 million and therefore GHMSI did not need to dedicate any excess surplus funds at all to community health reinvestment. For reasons explained in our March 25 letter, we believe GHMSI's position does not comply with the Commissioner's order.

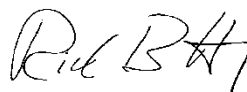
A public hearing is appropriate given that the plan will focus on reinvesting a public asset—excess surplus—to address community health needs. Healthcare professionals, experts, and the public should now have the opportunity to address these issues, illuminating the current scope of health care needs and how excess surplus dollars can address them effectively. Such a hearing will inform the Commissioner's decision concerning the appropriate content of a “fair and equitable” plan. DC Appleseed may offer proposals for the Commissioner to consider, which proposals will be informed by the analysis that the Urban Institute is now doing of unmet health care needs of the District of Columbia community.

The first surplus review decision applying MIEAA was handed down by the previous commissioner on October 29, 2010. Nearly five years later, that first surplus review proceeding is still underway. In light of the protracted nature of this proceeding and the urgency of the public health needs at its core, we respectfully urge you to take appropriate action to drive the surplus review to a conclusion.

Sincerely,



Water Smith, Executive Director



Richard B. Herzog
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Deborah Chollet, Ph.D.



Marialuisa S. Gallozzi
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cc: Mr. Philip Barlow, Associate Commissioner for Insurance
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